

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

CHUCK M. SPENCER,

Plaintiff,

V.

DR. JANSSEN WILLIAMS,

Defendant.

8:09CV25

# MEMORANDUM AND ORDER

This matter is before the court on Plaintiff's Motions to Amend Defendants. (Filing Nos. [12](#) and [13](#).) In his Motions, Plaintiff requests that he be granted leave to add an additional Defendant, Correct Care Solutions.

Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend “shall be freely given when justice so requires.” The applicable standard is summarized in *Foman v. Davis*, 371 U.S. 178, 182 (1962), which states:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claims on the merits. In the absence of any apparent reason-such as undue delay, bad faith or dilatory motive on the part of the movant, ... undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc.-the leave sought should, as the rules require, be “freely given.”

Id. Here, Plaintiff has not yet served any Defendant, and thus no answer has been filed and no discovery has been undertaken. The court has carefully reviewed the proposed amendment and finds that amendment would not be futile and is not made in bad faith. The Motions to Amend Defendants are therefore granted.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motions to Amend Defendants (filing nos. 12 and 13) are granted.
2. The Clerk of the court is directed to add Correct Care Solutions as a Defendant in this matter. The Clerk of the court shall send to Plaintiff one additional summons form and one additional USM-285 form.
3. To obtain service of process on Defendant Correct Care Solutions, Plaintiff must complete and return the summons form which the Clerk of the court will provide. The Clerk of the court shall send ONE (1) summons form and ONE (1) USM-285 form to Plaintiff together with a copy of this Memorandum and Order. Plaintiff shall, as soon as possible, complete the forms and send the completed forms back to the Clerk of the court. In the absence of the forms, service of process cannot occur.
4. Upon receipt of the completed forms, the Clerk of the court will sign the summons form, to be forwarded with a copy of the Complaint to the U.S. Marshal for service of process. The Marshal shall serve the summons and Complaint without payment of costs or fees. Service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal. The Clerk of the court will copy the Complaint, and Plaintiff does not need to do so.
5. Fed. R. Civ. Pro. 4 requires service of a complaint on a defendant within 120 days of filing the complaint. However, in accordance with the court's previous orders, Plaintiff shall have until October 8, 2009 in which to serve all Defendants in this matter. Failure to serve all Defendants by that date will result in dismissal of this matter without further notice as to such defendant. A defendant has twenty (20) days after receipt of the summons to answer or otherwise respond to a complaint.

6. Plaintiff's Motion for Status (filing no. [7](#)) is denied as moot.

June 29, 2009.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge

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